

Message Text

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ACTION ACDA-10

INFO OCT-01 EUR-12 IO-11 ISO-00 IOE-00 ACDE-00 AF-06

ARA-06 CIAE-00 DODE-00 EA-07 PM-04 H-02 INR-07 L-03

NASA-01 NEA-10 NSAE-00 NSC-05 OIC-02 SP-02 PA-01

PRS-01 OES-03 SS-15 USIA-06 SAJ-01 /116 W

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P 031445Z FEB 76

FM USMISSION IAEA VIENNA

TO SECSTATE WASHDC PRIORITY 7000

INFO USERDA GERMANTOWN PRIORITY

AMEMBASSY MOSCOW

C O N F I D E N T I A L VIENNA 0824

EO 11652: GDS

TAGS: TECH, PARM, IAEA

SUBJECT: IAEA CONSULTANTS' MEETING RE LEGAL ASPECTS PNE

MOSCOW FOR BUCHHEIM, TTB/PNE DEL

USERDA FOR R. DUFF, ISA; R.T. JOHNSON, OGC; SIEVERING ASST,
ADMINISTRATOR FOR INTERNATIONAL AFFAIRS

DEPT PASS IO/SCT

ALSO PASS ACDA: J. MALONE; T. DAVIES

REF: STATE 023739

1. SUBJECT MEETINGS OPENED BY DIRECTOR GENERAL
FEBRUARY 2, WITH CONSULTANTS FROM PAKISTAN,
FRANCE AND HUNGARY, OBSERVERS FROM AUSTRALIA,
BULGARIA, COLOMBIA, CZECHOSLOVAKIA, DENMARK,
FINALND, INDIA, INDONESIA, JAPAN, NORWAY,
PHILIPPINES, S. AFRICA, SWEDEN, SWITZERLAND,
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UK, USSR, US, ROMANIA, BELGIUM. AT FRG REQUEST,

STATUS OF PARTICIPANT (FREYTAG OF LOCAL MISSION)
CHANGED TO OBSERVER IN LIGHT ABSENCE VON WELK.

2. SECRETARIAT HAD HOPED VON WELK WOULD BE
ELECTED MEETING CHAIRMAN. IN HIS ABSENCE,
MACGIBBON (DIRECTOR, IAEA LEGAL DIVISION) ELECTED
CHAIRMAN, WITH PENDER (LEGAL DIVISION)
AS SCIENTIFIC SECRETARY.

3. MEETING COMMENCED WITH COMPLAINT BY
FREYTAG RE IAEA PROCEDURE FOR ESTABLISHING
MEETING DATE, NOTING POSTPONEMENT FROM
ORIGINAL JANUARY 12 DATE NOT CLEARED IN
ADVANCE WITH FRG, AND THAT ABSENCE OF
FRG CONSULTANT REQUIRED FRG TO RESERVE
POSITION ON DRAFT LEGAL STUDY. FREYTAG
ASKED SECRETARIAT TO ESTABLISH TIME FOR
SECOND CONSULTANT'S MEETING PRIOR NEXT
MEETING AD HOC ADVISORY GROUP NOW RESCHEDULED
FOR WEEK OF MAY 31. FRG OPENING STATEMENT
NOTED DRAFT SECRETARIAT PAPER GOOD BACKGROUND
BUT THAT MAIN PURPOSE THESE MEETINGS TO
DEVISE STRUCTURE AND CONTENT MODEL AGREEMENT
AS ENVISIONED PARA 3 OF TERMS OF REFERENCE.
FREYTAG TABLED PROPOSED GENERAL OUTLINE MODEL

AGREEMENT.

4. SWISS, JAPANESE AND CANADIAN PARTICIPANTS
SUPPORTED FREYTAG VIEW THAT MAIN OBJECTIVE TO

DEVISE MODEL AGREEMENT. SWISS (VON SCHENK)
INDICATED STRONGEST VIEW THIS POINT, STATING
SECRETARIAT DRAFT PAPER "SHORT OF MARK", AND
INDICATING SECRETARIAT SHOULD TABLE DRAFT MODEL
AGREEMENT WHICH HE UNDERSTOOD ALREADY PREPARED.
(MACGIBBON DENIED EXISTENCE OF SUCH DOCUMENT.)
SWISS INDICATED STRONG CONCERN THAT FAILURE
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THIS GROQP TO ACHIEVE CONCRETE RESULT (I.E.,

DRAFT MODEL AGREEMENT) COULD LEAD TO "INTERNATIONAL
POLITICAL REPERCUSSIONS" IF HAVE-NOTS VIEW THIS
GROUP AS ENGAGING IN FOOT DRAGGING ON PNE QUESTIONS.

5. FOLLOWING MACGRIBBON STATEMENT THAT MEETING

SHOULD FOLLOW TERMS OF REFERENCE (I.E., BEGIN WITH IDENTIFICATION LEGAL ISSUES, WITH LATER IDENTIFICATION LEGAL INSTRUMENTS REQUIRED) CANADIAN STATED BELIEF THAT FIRST TASK IS TO DEVISE SPECIAL INTERNATIONAL AGREEMENT AS CALLED FOR BY NPT ARTICLE 5, EITHER AS DRAFT MULTILATERAL CONVENTION OR PROCEDURE SIMILAR TO THAT WHICH LED TO DEVELOPMENT INFRICR 153. CANADIAN POSITION ECHOED JAPANESE STATEMENT THAT FIRST PRIORITY TO DEFINE CONTENT OF SPECIAL INTERNATIONAL AGREEMENT.

6. USSR PARTICIPANT (MISHARIN) OF LOCAL MISSION READ STATEMENT CONTAINING FOLLOWING POINTS: (A) DRAFT SECRETARIAT PAPER LEAVES IMPRESSION PNE IS LEGAL ABSTRACTION. USSR DISAGREES THIS IMPRESSION, BELIEVING PNE CAN BE USEFUL AND ECONOMICAL;

(B) DRAFT PAPER UNDERSTATES IAEA PNE ROLE SINCE

IAEA ONLY INTERNATIONAL BODY CAPABLE ACTING UNDER NPT ARTICLE 5 AND ENTIRE PROBLEM MUST BE SOLVED IN NPT FRAMEWORK; (C) WHILE USSR "READY TO PROVIDE" PNE SERVICES TO ALL NNWS'S WHETHER OR NOT NPT PARTIES, ISSUES MUST BE SOLVED IN NPT FRAMEWORK, AND REFERENCES TO LANFZ IN DRAFT INAPPROPRIATE (LATTER STATEMENT REITERATED BY USSR LATER);

(D) LTBT POSES SEVERAL ISSUES; HOWEVER "RADIATION SAFETY" ISSUE OF PRIME IMPORTANCE, AND THUS MAY BE PREMATURE FOR THIS GROUP TO ATTEMPT DRAFT AN INTERNATIONAL AGREEMENT UNTIL THAT ISSUE RESOLVED. COMMENT: USSR STATEMENT STRONGER THAN U.S. PARTICIPANTS
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HAD ANTICIPATED. INFORMAL TALK WITH
PENDER FEBRUARY 1 INDICATED USSR DESIROUS TAKING

AFFIRMATIVE STANCE RE NPT, ARTICLE 5, BUT MISHARIN STATEMENT MAY FORESTALL USSR INTENT ANNOUNCE CURRENT AVAILABILITY OF PNE SERVICES FOR VARIETY OF APPLICATION.

END COMMENT.

7. U.S., SWEDISH, U.K., ITALIAN AND
AUSTRALIAN PARTICIPANTS STATED NEED TO
PROCEED DISCUSS LEGAL ISSUES IN CONTEXT
DRAFT SECRETARIAT PAPER IN ORDER FOLLOW
MANDATE GIVEN BY AD HOC ADVISORY GROUP.

FIVE AGREED NEED TO ACHIEVE CONSENSUS ON
ISSUES PRIOR ATTEMPTING DRAFT LEGAL INSTRU-
MENTS.

8. AFTERNOON SESSION INCLUDED SOME DISCUSSION
PARAS. 47-51 DRAFT PAPER. USSR STATED NO
OBJECTION PARAS. 47-49, BUT OBJECT PARAS.
50-51. STATING LANFZ TREATY NOT RELEVANT
AND THAT PARA. 51 NOT APPROPRIATE IN ENTIRETY.

9. FOLLOWING ITALIAN STATEMENT RE BASIS
FOR PARA. 51 INTERPRETATION THAT NPT REQUIRES
NWS ANNOUNCE PNE AVAILABILITY, U.S. PARTICIPANT
MADE STATEMENT RE NEED FOR CLEAR UNDERSTANDING
OF CONSTRAINTS IMPOSED BY RELEVANT
TREATIES, ALONG LINES OF FIRST INSTRUCTION,
REFTEL PARA THREE. U.S. PARTICIPANT MADE FURTHER
POINT RE PARA 51 OF DRAFT PAPER THAT NPT
IMPOSES NO OBLIGATION TO ANNOUNCE PROPOSED PNE
APPLICATION, NOR DOES NPT IMPOSE AN OBLIGATION
UPON NWS WHICH HAVE REALIZED BENEFITS FROM PNE

APPLICATIONS TO SO NOTIFY IAEA.

10. SESSION ENDED WITH FURTHER DEBATE CONCERNING
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NEED FOR SUBSEQUENT MEETING, URGED PARTICULARLY
BY SWISS. OTWAY INDICATED (AFTER CONSULTATION WITH
DEP. DIR. GEN. ZHELUDEV) SCHEDULING
IMPOSSIBLE PRIOR MAY 31 AD HOC MEETING, BUT
MACGIBBON OFFERED POSSIBILITY OF SUCH MEETING.

1. DURING FEB. 1 INFORMAL MEETING BETWEEN
BRUSH (U.S. REP.) AND PENDER, PENDER INDICATED
BELIEF CONCEPT OF ABSOLUTE SUPPLIER LIABILITY AS
ENCOURAGED IN DRAFT PAPER WOULD SLOW USSR SUPPORT
FOR PNE IN GENERAL. ON STRONG IAEA ROLE
AS CONTEMPLATED DRAFT PAPER, PENDER INDICATED
SECRETARIAT NOT PRESSING FOR SUCH ROLE, BUT
WAS INCLUDED TO GIVE FULL RANGE OF OPTIONS TO
AD HOC GROUP. LABOWITZ

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